

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UFCW Local 1500 Welfare Fund and
Mayor and City Council of Baltimore *et al.*,

V.

AbbVie Inc., *et al.*

J M Smith Corporation d/b/a Smith
Drug Company, *et al.*

V.

Forest Laboratories LLC, *et al.*

J M Smith Corporation d/b/a Smith
Drug Company, *et al.*,

V.

Watson Pharma, Inc., *et al.*

KPH Healthcare Services, Inc.,
a/k/a Kinney Drugs, Inc., *et al.*,

V.

AbbVie Inc., *et al.*

KPH Healthcare Services, Inc.,
a/k/a Kinney Drugs, Inc., *et al.*,

V.

Hetero USA Inc., *et al.*

JOINT [PROPOSED] CASE MANAGEMENT PLAN AND SCHEDULING
ORDER NO. 1

LEWIS J. LIMAN, United States District Judge:

This Civil Case Management Plan and Scheduling Order applies to the Direct Purchaser Plaintiffs, End-Payor Plaintiffs, and Defendants¹, all of whom have conferred and agreed, in accordance with Federal Rule of Civil Procedure 26(f)(3):

1. All parties **do not consent** to conducting all further proceedings before a United States Magistrate Judge, including motions and trial, pursuant to 28 U.S.C. § 636(c).
2. The parties **have** conferred pursuant to Federal Rule of Civil Procedure 26(f).
3. To date, the parties have not engaged in settlement discussions.
4. **Motion to Transfer:**
 - a. Defendants shall file their motions to transfer by Friday, **October 30, 2020**.

¹ Direct Purchaser Plaintiffs are J M Smith Corporation d/b/a Smith Drug Company and KPH Healthcare Services, Inc., a/k/a Kinney Drugs, Inc.

End-Payor Plaintiffs are: The City of Providence, Rhode Island; Teamsters Local 237 Welfare Fund; Teamsters Local 237 Retirees' Benefit Fund; Mayor and City Council of Baltimore; UFCW Local 1500 Welfare Fund; Law Enforcement Health Benefits, Inc.; Teamsters Local No. 1150 Prescription Drug Benefit Plan; Teamsters Western Region & Local 177 Health Care Plan; Fraternal Order of Police, Miami Lodge 20 Insurance Trust Fund; Katherine Chinnery; Angela Maffei; York Keels; Nina Cook; Richard Malek; Jessica Soles; and John Wilder.

Direct Purchaser Plaintiffs and End-Payor Plaintiffs are, collectively, "Plaintiffs."

Defendants in the End-Payor Action and in Direct Purchaser Action Nos. 20-cv-05735 and 20-cv-08754 are: AbbVie Inc.; Allergan, Inc.; Allergan Sales, LLC; Allergan USA, Inc.; Forest Laboratories, Inc.; Forest Laboratories Holdings, Ltd.; Forest Laboratories Ireland, Ltd.; and Forest Laboratories, LLC.

Defendants in Direct Purchaser Action Nos. 20-cv-7110 and 20-cv-08756 are: Hetero USA Inc., Hetero Labs Ltd., Hetero Drugs Ltd.; Torrent Pharmaceuticals Ltd., Torrent Pharma Inc., Ascend Laboratories, LLC, Alkem Laboratories Ltd., Indchemie Health Specialties Private Ltd., Glenmark Generics Inc., USA n/k/a Glenmark Pharmaceuticals Inc., Glenmark Generics Ltd. d/b/a Glenmark Pharmaceuticals Ltd., Glenmark Pharmaceuticals SA n/k/a Ichnos Sciences, SA, Amerigen Pharmaceuticals, Inc., Amerigen Pharmaceuticals, Ltd., Watson Laboratories, Inc. (NV), Watson Laboratories, Inc. (DE), Watson Laboratories, Inc. (NY), Watson Laboratories, Inc. (CT), Watson Pharma, Inc., Watson Pharmaceuticals Inc., Actavis, Inc., Teva Pharmaceutical Industries Ltd., and Teva Pharmaceuticals USA, Inc. Additionally, generic manufacturer defendants Torrent Pharmaceuticals Ltd. and Glenmark Pharmaceuticals SA n/k/a Ichnos Sciences SA have not been served by J M Smith Corporation. Neither the Amerigen nor Hetero defendants have entered appearances as yet and are not signatories to this proposed order.

- b. Plaintiffs shall file any opposition(s) to Defendants' motion(s) to transfer no later than Friday, **November 24, 2020**.
 - c. Defendants shall file any reply in support of their motion to transfer no later than Monday, **December 11, 2020**.
 - d. Oral argument, if any, on the motion to transfer shall be on a date set by the Court.
5. J M Smith Drug Company shall file a Response to KPH's Motion regarding appointment of interim lead counsel for the proposed Direct Purchaser Class by **October 30, 2020**.
- a.
6. Direct Purchaser Plaintiffs and End-Payor Plaintiffs shall file their respective Consolidated Class Action Complaints **21 days** following the appointment of interim lead counsel for the direct purchaser class.

Pursuant to Paragraph 2(J) of the Court's Individual Practices in Civil Cases, parties may extend the deadlines set forth in Local Civil Rule 6.1 by an agreed-upon schedule, which shall govern as long as it is disclosed to the Court in a letter accompanying the initial motion. At the Initial Pretrial Conference, parties should come prepared to discuss a proposed briefing schedule for any anticipated motion.

7. Plaintiffs may amend their respective Consolidated Class Action Complaints no later than **35 days** following the filing of Defendants' motion to dismiss, pursuant to the Court's Individual Practice 3.B.

Note: Pursuant to Paragraph 3(B) of the Court's Individual Practices in Civil Cases, the Court will deny a motion to dismiss, as moot, without prior notice to the parties, if a plaintiff amends its pleading without objection from the defendant. The moving party may then (a) file an answer; (b) file a new motion to dismiss; or (c) submit a letter-motion stating that it relies on the initially-filed motion to dismiss in which event the Court will treat the initially-filed motion to dismiss as a new motion to dismiss the amended pleading.

8. **Motion to Dismiss:**

- a. Defendants shall move in response to the Direct Purchaser Plaintiffs' Consolidated Class Action Complaint and the End-Payor Plaintiffs' Consolidated Class Action Complaint no later than **65 days** following the filing of Plaintiffs' Consolidated Class Action Complaints.
- b. Defendants' Answers shall be due in accordance with Fed. R. Civ. P. 12(a)(4)(A).

- c. Direct Purchaser Plaintiffs and End-Payor Plaintiffs shall file their opposition(s) no later than **35 days** after Defendants file any motion(s) in response to the Direct Purchaser Plaintiffs' Consolidated Complaint and the End-Payor Plaintiffs' Consolidated Complaint.
 - d. Defendants shall file their replies in support of their motion(s), if any, no later than **28 days** after Plaintiffs file any opposition(s).
 - e. Oral argument, if any, on the motions to dismiss shall be on a date set by the Court.
9. **Initial disclosures** pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure shall be completed no later than **December 7, 2020**, or **14 days** after appearing, for any Party that has yet to appear.
10. **Initial requests for production of documents** shall be served on **December 10, 2020**. Pending further order of the Court the parties do not need to respond to such requests before the motion to dismiss ruling, but shall use the request for production of documents to inform the scope of document holds.
11. **Interrogatories** pursuant to Rule 33.3(a) of the Local Rules of the Southern District of New York shall be served by **January 15, 2021**. Plaintiffs shall be limited to 30 interrogatories directed to each Defendant Group.² Each Defendant Group shall be limited to 30 interrogatories directed to each Plaintiff Group.³
12. **Protective Order and ESI Protocol:**
- a. **Protective Order.** The parties shall file a proposed Protective Order, or proposed competing Protective Orders if the parties do not reach an agreement, no later than **December 15, 2020**.
 - b. **ESI Protocol.** The parties shall file a proposed ESI Protocol, or proposed competing ESI Protocols if the parties do not reach an agreement, no later than **February 16, 2021**.

² For purposes of L.R. 33.3(a) here, "Defendant Group" refers to each family of Defendants—including all corporate parents, subsidiaries, and affiliates. For example, the affiliated companies AbbVie Inc.; Allergan, Inc.; Allergan Sales, LLC; Allergan USA, Inc.; Forest Laboratories, Inc.; Forest Laboratories Holdings, Ltd.; Forest Laboratories Ireland, Ltd.; Forest Laboratories, LLC, and Watson Pharmaceuticals, Inc. (later known as Actavis, Inc., n/k/a Allergan Finance, LLC) ("Forest Defendants") are a single Defendant Group. Likewise, the following constitute a single Defendant Group: Watson Laboratories, Inc. (DE) (n/k/a Actavis Laboratories UT, Inc.), Watson Laboratories, Inc. (CT), Watson Pharma, Inc. (n/k/a Actavis Pharma, Inc.), Teva Pharmaceutical Industries Ltd., and Teva Pharmaceuticals USA, Inc. ("Watson Defendants").

³ For purposes of L.R. 33.3(a) here, "Plaintiff Group" refers to each proposed class. For example, the End-Payor Plaintiffs are a single Plaintiff Group and the Direct Purchaser Plaintiffs are a single Plaintiff Group.

13. **Challenged Agreements:** Defendants shall produce the underlying patent infringement settlement agreements and any related agreements submitted for review to the FTC or DOJ by **November 9, 2020** on a confidential, outside counsel only basis (e.g., the agreements shall not be disclosed to in-house counsel or business persons for either Plaintiffs or Defendants). To the extent Plaintiffs quote or otherwise disclose the contents of the Challenged Agreements in their Consolidated Class Action Complaints, or the Parties quote or otherwise disclose their content in briefing, those consolidated complaints and any such briefing shall be filed under seal with a letter motion consistent with Rule 2(G) of the Court’s Individual Practices in Civil Cases. Absent a motion to the contrary, the Court will hold the motion to seal in abeyance for **5 business days** for defendants to file a letter brief in support of any proposed redactions, and as exhibits thereto, proposed redacted public versions of any sealed papers consistent with Rule 2(G). In the absence of any such motion, the Court will unseal the Consolidated Class Action complaint and related briefing without redactions. Once the Court approves any proposed redactions, the producing party shall provide the filing party a version of the approved redacted public papers for filing.
14. **Coordination of the actions:** The Direct Purchaser Actions and the End-Payor Actions shall be coordinated with one another under one docket to promote efficiency in managing and litigating the cases, and the Direct Purchaser Actions and the End-Payor Actions shall be coordinated for purposes of discovery and pretrial proceedings to the extent practicable.
15. **Case caption:** The files of the coordinated actions shall be maintained in one file under Case No. 1:20-cv-05735-LJL with the following caption:

<i>In re Bystolic Antitrust Litigation</i>	Case No. 1:20-cv-05735-LJL
This Document Relates To:	

When a filing is intended to apply to all actions, the words “All Actions” should appear immediately after the words “This Document Relates To:” in the caption set out above. When a filing is intended to apply only to one, or to some, but not all, of such actions, the party filing the document should indicate the action(s) to which the document is intended to apply. The parties may indicate, for example, “All Direct Purchaser Actions” or “All End-Payor Actions.”

16. **Service:** Any Defendant that has accepted or waived service of any complaint filed by the End-Payor Plaintiffs agrees to waive service as to any future amended complaint(s) filed in the above-captioned EPP action, provided that EPP Plaintiffs provide copies of

such complaints to Defendants' counsel via ECF or email. Any Defendant that has accepted or waived service of any complaint filed by J M Smith Corporation agrees to waive service as to any future amended complaint(s) filed in the above-captioned actions brought by J M Smith Corporation, provided that J M Smith Corporation provides copies of such complaints to Defendants' counsel via ECF or email. Any such Defendant waives any objections or defenses regarding insufficient service of process of any such future complaint(s), and preserves all other defenses, including as to personal jurisdiction and venue.

17. **Additional Deadlines:** Following the Court's ruling on any motions to dismiss, the parties agree to meet and confer on deadlines for the remainder of discovery and post-discovery proceedings, including fact and expert discovery, class certification and summary judgment motions and to submit agreed upon or competing scheduling proposals to the Court within **14 days** of any ruling on the motions to dismiss.

Dated: October 30, 2020
New York, New York

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IT IS SO ORDERED.

Dated: November 4, 2020
New York, New York


LEWIS J. LIMAN
United States District Judge